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## STATE BANK OF VIRGINIA v. DOMESTIC SEWING MACHINE CO.—Decided at Wytheville, June 20, 1901.—Whittle, J. Absent, Cardwell, J:

1. RECEIVER'S CONTRACTS—*Alteration by court.* The contracts of a receiver, made with expressed or implied authority, cannot be annulled at the pleasure of the court.

2. RECEIVERS—*Active and passive—Powers.* The powers of active receivers of going concerns are very much broader than those of passive receivers, who are charged with the mere preservation of property.

3. CONTRACTS—*Novation—Intention.* Whether a new security shall be taken to be a novation or substitution for and an extinguishment of a prior indebtedness, is a matter of intention; and the burden rests upon him who asserts that there has been such novation to establish it.

RECEIVERS—*Powers—Discounts—Collaterals—Change of evidence of debt—Case in judgment.* Under the evidence in this cause, the receiver had authority to discount notes which came into his hands in the course of business and to protect them by the hypothecation of other notes and securities as collateral; and, when he did so, such collaterals to the extent necessary to protect the discounts, ceased to be assets of the receivership, and became the absolute property of the party discounting. The subsequent surrender of the collaterals to the receiver was for collection only, and as agent for the true owner, and having applied such collections to expenses of the receivership the same should be restored out of the other funds in hands of the receiver.

TRUSTS AND TRUSTEES—*Diversion of fund.* A court of equity will follow a fund diverted from the owner, or charged with a lien, as far as it can be traced, and will enforce the true owner's rights against any property in which it may have been invested.

## KEISTER v. KEISTER AND OTHERS.—Decided at Wytheville, June 27, 1901.—Cardwell, J:

1. DEEDS—*Partition—Husband and wife as grantees—Habendum to husband only—Case in judgment.* A father gave to his son and son-in-law a title bond in the penalty of \$1,500, with condition to convey to them certain lands. The obligees entered into possession of the lands, and a few years thereafter the obligor died intestate, and his heirs made a deed of release or quit-claim to the land. This deed makes the wives of the son and son-in-law parties of the second part, but explicitly limits the use and benefits of the property to the son and son-in-law. A few months thereafter the son and son-in-law made partition of the land by several deeds to each other. In these deeds the wives are again made parties of the second part, but the use and benefits are limited to the son and son-in-law respectively. *Held:* The wives took no interest in the land. The conveyance by the heirs was a conveyance to the son and son-in-law only, and in conveying to them the heirs simply did what the law would have compelled them to do. The subsequent deeds made by the son and son-in-law in which their wives united amounted to simply a partition of the property between them.

## HUDSON v. MAX MEADOWS LAND &amp; IMPROVEMENT CO.—Decided at Wytheville, June 27, 1901.—Harrison, J. Absent, Keith, P:

1. SPECIFIC PERFORMANCE—*Parol contract—Statute of frauds—Part performance—Inability to perform.* The acts of part performance relied on to take